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Message Text

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ACTION AID-59

INFO OCT-01 EA-07 ISO-00 L-03 IGA-02 SS-15 NSC-05 SP-02

MMO-01 A-01 CPR-01 CIAE-00 INR-07 NSAE-00 DODE-00

PRS-01 /105 W
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R 131145Z FEB 76
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC 8453

C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 3367

E.O. 11652: XGDS-3
TAGS: PFOR EAID TH US
SUBJ: A.I.D. BILATERAL NEGOTIATIONS

REF: A) STATE 01988 B) BANGKOK 1032 C) BANGKOK TOAID A-27
D) 75 STATE 265799

SUMMARY: THIS MESSAGE COMMENTS ON THE PROBLEM AREAS REF A RAISED. ACTION REQUESTED: WASHINGTON APPROVAL, INCLUDING CIRCULAR 175 REVISION IF NECESSARY, OF THE DRAFT DIPLOMATIC NOTE CONTAINED IN REF B. END SUMMARY.

1. COMMENTS ON REFERENCE A. IT IS OUR UNDERSTANDING THAT THE EXCHANGE OF NOTES REGARDING DIPLOMATIC IMMUNITIES FOR USOM PERSONNEL WOULD NOT BE MADE PUBLIC IN THAILAND. SHOULD WE SUCCEED IN SECURING DIPLOMATIC IMMUNITIES FOR U.S. DIRECT-HIRE FOREIGN ASSISTANCE STAFF THROUGH AN EXCHANGE OF NOTES, WE WILL HAVE ACHIEVED A STATUS THAT OTHER MISSIONS DO NOT ENJOY. OBVIOUSLY , THE RTG WILL REFUSE TO ADVERTISE THAT DISCREPANCY.

2. WE DO NOT SHARE WASHINGTON'S EXPRESSED CONCERN THAT THE RTG MIGHT NOT HONOR AN UNPUBLISHED EXCHANGE OF DIPLOMATIC NOTES GRANTING IMMUNITIES, SHOULD THE ISSUE ARISE. THE RTG HAS IN THE PAST, ALBEIT WITH MUCH DISCOMFITURE, ACKNOWLEDGED THE DIPLOMATIC IMMUNITY OF CERTAIN U.S. MILITARY PERSONNEL
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FOR WHOM MUCH LESS FORMAL DOCUMENTATION EXISTS.

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3. THE CASE ACT REQUIREMENTS,OF WHICH WE DO NOT BELIEVE
THE RTG IS AWARE, MAY COMPLICATE THEIR WILLINGNESS TO ISSUE
A NOTE SPECIFYING THE IMMUNITIES WE SEEK. WE CAN UNDERSTAND
A.I.D.' S INTEREST IN HAVING A PUBLIC PERMANENT RECORD THAT
CONFORMS WITH OTHER WORLDWIDE BILATERALAID AGREEMENTS. ON
THE OTHER HAND, WE DO NOT SEE THAT, GIVEN THE VOLUME OF
MATERIALS A.ID.D. PROVIDES CONGRESS UNDER THE CASE ACT,
LITERAL COMPLIANCE WITH THE ACT IN THIS CASE WOULD NECESSARILY
CREATE A RECORD LIKELY TO ACHIEVE ANY PUBLIC NOTICE. HENCE
UNLESS WASHINGTON FEELS COMPELLED TO PUBLISH AS AN INTERNA-
TIONALAGREEMENT AN EXCHANGE WHICH IS ESSENTIALLY PROCEDURAL
IN NATURE, THE EXCHANGE WOULD NOT CREATE A PERMANENT VISIBLE
RECORD EMBARRASSING TO THE RTG IN ITS RELATIONS WITH OTHER
DONORS. SEE PARAGRAPHS 10-12 BELOW.
4. PRESENT PASA EMPLOYEES ARE INCLUDED IN THE LIST OF 28
THAT IS TO ACCOMPANY THE NOTE PROPOSED IN REF B. THE DRAFT
NOTE REFERS TO THE LIST AS BEING OF "DIRECT-HIRE AMERICAN
STAFF OF USOM". WE BELIEVE THAT RTG ACCEPTANCE OF THAT LIST,
AND THE LANGUAGE IN THE NOTE REGARDING SHIFTS OF PERSONNEL AND
CHANGES OF TITLE, WOULD ESTABLISH ADEQUATE PRECEDENTS AND
PROCEDURES TO COVER FUTURE PASA EMPLOYEES.

5. COVERAGE OF VISITING AID DIRECT-HIRE AMERICAN UNDER
THE PRESENT AGREEMENT WOULD DEPEND ON WHETHER
ONE COULD INTERPRET ARTICLE IV BROADLY ENOUGH TO COVER
THEM. RECORDS HERE DO NOT REFLECT THAT THE QUESTION HAS
EVER ARISEN IN A SPECIFIC CASE INVOLVING IMMUNITIES. IN
PRACTICE, AID VISITORS AND TDY PERSONNEL WITH OFFICIAL
PASSPORTS ENJOY CUSTOMS AND TAX EXEMPTIONS AND OTHER PRIVILEGES
AVAILABLE TO THE USOM STAFF. WE WOULD ANTICIPATE THAT A
SIMILAR SITUATION WOULD PREVAIL IN THE FUTURE, AND THAT
ANY USG OFFICIAL VISITOR WOULD RECEIVE THE FUNCTIONAL
EQUIVALENT OF DIPLOMATIC IMMUNITY IF HE GOT INTO TROUBLE IN
THE COURSE OF HIS OFFICIAL DUTIES.

6. IF EXCLUSION OF MENTION OF DIPLOMATIC IMMUNITIES FROM
THE BODY OF THE AGREEMENT REQUIRES CIRCULAR 175 REVISION,
WE CAN EXPLAIN THE RESULTING DELAYS TO THE RTG IN THESE
TERMS. WE IN BANGKOK ARE COASTING COMFORTABLY UNDER THE
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EXISTING AGREMENT AND ARE IN NO PARTICULAR HURRY TO
CONCLUDE THE NEW ONE. WE HAVE ALREADY SLIPPED PAST
THE MFA PERSONNEL CHANGES (THE NEW UNDER-SECRETARY OF STATE)
THAT MIGHT COMPLICATE OUR NEGOTIATIONS. SO FAR THERE IS
NO EVIDENCE TO SUGGEST THAT HE HAS RE-EXAMINED THE
NEGOTIATIONS TO DATE WITH AN EYE TO REPUDIATING WHAT THE
TWO SIDES HAVE ALREADY AGREED TO. THE ONLY REMAINING MAJOR
CONSIDEATION IS THAT WE NOT APPEAR TO THE THAI TO BE

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UNDULY STALLING FOR TIME IN OUR BUREAUCRATIC DELIBERATIONS.

7. WHILE WE AGREE THAT "SPECIAL CONSIDERATION" IS NOT THE SAME AS A SPECIFIC GRANT OF PRIVILEGES AND IMMUNITIES (PARA 4, REF A), IT IS LIKELY TO BE THE BEST THE RTG IS WILLING TO OFFER IN WRITING. ONE PURPOSE OF THE NOTE PROPOSED IN REF B IS TO SMOKE THEM OUT ON THIS QUESTION AND TO MAKE IT A MATTER OF RECORD THAT WE REGARD "SPECIAL CONSIDERATION" AS AN EXPRESSION OF RTG WILLINGNESS TO GRANT TO THE DIRECT HIRE AMERICAN STAFF OF USOM PRIVILEGES AND IMMUNITIES COMPARABLE TO THOSE OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF THE EMBASSY.

8. WE DO NOT SEE THAT WAITING FOR THE SUCCESSOR GOVRN-MENT WILL PROFIT US AT ALL. THE ISSUE OF BILATERAL REVISION FIRST DEVELOPED AND SURFACED UNDER THE SANYA THAMMASAK CARETAKER GOVRNMENT; THE NEGOTIATIONS HAVE TAKEN PLACE EXCLUSIVELY WITH THE PERMANENT STAFF OF THE DEPARTMENT OF TECHNICAL AND ECONOMIC COOPERATION (DTEC) AND MFA, WHOSE NEGOTIATING POSITION IS UNLIKELY TO CHANGE UNDER ANY FREELY ELECTED REGIME. MOREOVER, VARIOUS ASPECTS OF THE U.S. -THAI RELATIONSHIP ARE LIKELY TO BE ELECTION CAMPAIGN ISSUES, AND THE SUCCESSOR GOVERNMENT MIGHT FEEL CONSTRAINED TO TAKE AN EVEN STRONGER AND MORE NATIONALIS-TIC STAND THAN THE PRESENT GOVERNMENT. UNDER THE CIRCUM-STANCES, WE BELIEVE IT IS BEST TO CONTINUE ON COURSE WITHOUT REGARD TO THE POSSIBLE COMPLEXION OF THE NEXT GOVERNMENT.

9. GENERAL OBSERVATIONS ON THENEGOTIATIONS. THE REAL ISSUE FOR WHICH WE HAVE BEEN FIGHTING IS WHETHER USG PERSONNEL ENGAGED IN AID ACTIVITIES WILL RECEIVE THE SAME PRIVILEGES AND IMMUNITIES AFFORDED TO THE ADMINISTRATIVE AND TECHNICAL PERSONNEL OF THE EMBASSY. THE THAI
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HAVE MADE SUBSTANTIAL CONCESSIONS FROM THEIR OPENING POSITION ON THIS POINT, AND WE BELIEVE WE HAVE OBTAINED WHAT WE WANT. WHAT REMAINS IS HOW TO IMPLEMENT THIS CONCESSION WITHOUT EMBARRASSING THE RTG, WHILE AT THE SAME TIME CREATING AN UNAMBIGUOUS PRECEDENT THAT WILL HOLD WATER WHEN WE NEED IT.

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MMO-01 A-01 CPR-01 CIAE-00 INR-07 NSAE-00 DODE-00

PRS-01 /105 W
---------- 071523
R 131145Z FEB 76
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC 8454

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10. THE FRICTION POINT IS THAT THE RTG WANTS CONSISTENCY WITH ITS OTHER ASSISTANCE BILATERALS THAT EXCLUDE FOREIGN ASSISTANCE PERSONNEL FROM DIPLOMATIC IMMUNITIES, WHEREAS THE USG WANTS CONSISTENCY WITH OUT OTHER BILATERALS THAT DO PROVIDE FOR THESE IMMUNITIES. IF THE BILATERAL AGREEMENT ITSELF MENTIONS IMMUNITIES, IT IS GOING TO VIOLATE ONE OF THESE TWO MUTUALLY EXCLUSIVE PRECEDENTS. FROM THE BANGKOK PERSPECTIVE, IT SEEMS MORE IMPORTANT TO GET THE IMMUNITIES THAN TO WORRY ABOUT HOW WE RECORD THIS ESSENTIALLY PROCEDURAL ARRANGEMENT WITH THE RTG.

11. BY AGREEING TO A SPECIFIC NUMBER OF USOM PERSONNEL TO RECEIVE THE ADMINISTRATIVE AND TECHNICAL LEVEL DIP-LOMATIC IMMUNITIES, AS THE RTG OFFERED TO DO IN ITS AIDE MEMOIRE, THE THAI WILL BE COMMITTING THEMSELVES TO GIVING THE IMMUNITIES TO THAT NUMBER OF PEOPLE UNTIL THE NUMBER IS RENEGOTIATED. SUCH AN AGREEMENT IS NO MORE FRAGILE THAN THE USUAL PHRASES IN BILATERAL AGREEMENTS REGARDING "MUTUAL AGREEMENT" ON THE SIZE OF AN AID MISSION. IN ITSELF, AN AGREEMENT AS TO THE NUMBER AND IDENTITY OF THE MEMBERS OF THE MISSION WHO ARE TO BE CONSIDERED ADMINISTRATIVE AND TECHNICAL STAFF MAY BE CONSIDERED SOMETHING LESS THAN AN INTERNATIONAL AGREEMENT REQUIRING TREATIES AND INTERNATIONAL AGREEMENTS SERIES (TIAS) PUBLICATION. AGAIN FROM THE BANGKOK PERSPECTIVE, IT APPEARS THAT A CASE COULD BE MADE THAT THE ARRANGE-
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MENTS FOR GIVING DIPLOMATIC IMMUNITIES TO THE USOM STAFF ARE ADMINISTRATIVE AND PRCEDURAL RATHER THAN AN "INTERNA-TIONAL AGREEMENT". WHAT IT WOULD AMOUNT TO IS A SLIGHT

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CHANGE IN THE PROCEDURE FOR NOTIFYING THE RTG AS TO WHO THE USOM PERSONNEL ARE WHO ARE TO RECEIVE THE APPROPRIATE IMMUNITIES. THE RTG WOULD IN EFFECT BE AGREEING THAT THE DIRECT-HIRE AMERICAN STAFF OF USOM ARE TANTAMOUNT TO THE ADMINISTRATIVE AND TECHNICAL STAFF OF THE EMBASSY.

12. THERE ARE SEVERAL FACTORS AFFECTING THIS NEGOTIATION WHICH BEAR REPEATING. A) MOST A.I.D. BILATERALS ARE NEGOTIATED WHILE USAID'S RELATIONS WITH THE HOST COUNTRY ARE WAXING, WHEREAS HERE THE PROGRAM IS FAR ADVANCED ON A WELL-PUBLICIZED DOWNGRADE. B) THE ADAMANCY OF THE RTG POSITION DERIVES NOT ONLY FROM ITS DESIRE FOR CONSISTENCY WITH ITS OTHER RECENTLY NEGOTIATED ASSISTANCE BILATERALS, BUT ALSO FROM ITS CONCERNS WITH MAINTAINING THE PRECEDENT FOR DEALING WITH POSSIBLE NEW BILATERAL ASSISTANCE RELATIONSHIPS, ESPECIALLY WITH THE SOVIETS AND THE PRC. C) WE DO NOT BELIEVE THE RTG IS ACTING VINDICTIVELY OR ATTEMPTING TO WITHDRAW STATUS HERETOFORE ENJOYED BY USOM PERSONNEL. ON THE CONTRARY, WE BELIEVE THEM GENUINELY INTERESTED IN FINDING A SOLUTION TO THIS IMPASSE WITH WHICH BOTH PARTIES CAN LIVE: SE FOR THE SHORT TERM, AND THEY FOR THE LONG.

13. THE EMBASSY AND USOM BELIEVE THAT THE NOTE PROPOSED IN REF B IS THE BEST COURSE OF ACTION, AND THAT IT HAS A REASONABLE CHANCE OF SUCCESS. WE REPEAT OUR REQUEST FOR AUTHORITY, INCLUDING CIRCULAR 175 REVISION IF NECESSARY, TO SEND THE PROPOSED NOTE, AND IF THE RTG IS AMENBLE, TO PROCEED TOFINAL NEGOTIATION AND SIGNATURE OF THE BILATERAL WHITEHOUSE

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